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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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KARL FINLEY,
Plaintiff,

v.

COUNTY OF MARIN; MARSHA GRANT;
DIANE STOKER; and DOES 1 through 50,
inclusive,
Defendants.

Case No. 07 5922

COMPLAINT FOR DAMAGES

VIOLATIONS OF GOVERNMENT CODE
SECTION 12940, *ET SEQ.*; VIOLATIONS
OF TITLE VII OF THE CIVIL RIGHTS
ACT, 42 U.S.C. §§ 2000e, *ET SEQ.*;
FAILURE TO PREVENT AND
INVESTIGATE HARASSMENT;
VIOLATION OF 42 U.S.C. §§ 1981, 1983,
1985, *ET SEQ.*; VIOLATIONS OF THE
CALIFORNIA CONSTITUTION

JURY TRIAL DEMANDED

BY FAX

Plaintiff complains and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff KARL FINLEY is, and at all relevant times hereto, has been a resident of the State of California. Plaintiff FINLEY is, and at all relevant times hereto, has been an employee of defendants within the meaning of California Fair Employment and Housing Act ("FEHA") and Title VII of the Civil Rights Act of 1964, as amended ("Title VII").

2. Defendant COUNTY OF MARIN, including its departments, units, and/or political subdivisions, is and at all relevant times hereto, was an employer operating as public entity within the State of California, County of Marin, who regularly employed more than 15 persons.

1 3. Defendant COUNTY OF MARIN is a county municipality located within the State
2 of California and doing business as a government entity under color of state authority and law.

3 4. Defendant MARSHA GRANT is an individual whose residence is located in the
4 State of California. Defendant GRANT is an employee of the COUNTY OF MARIN. For
5 purposes of the cause of action under the Civil Rights Act, defendant GRANT is being sued in
6 her individual capacity acting under color of law.

7 5. Defendant GRANT is a supervisor and/or management employee for purposes of
8 FEHA and/or Title VII. Defendant GRANT was the Nurse Manager for Detention Services, and
9 was promoted to plaintiff's supervisor in or about July 2006. Defendant GRANT was a relevant
10 decision-maker for purposes of the adverse employment actions referenced below.

11 6. Defendant DIANE STOKER is an individual whose residence is located in the
12 State of California. Defendant STOKER is an employee of the COUNTY OF MARIN. For
13 purposes of the cause of action under the Civil Rights Act, defendant STOKER is being sued in
14 her individual capacity acting under color of law.

15 7. Defendant STOKER is a supervisor and/or management employee for purposes of
16 FEHA and/or Title VII. At all relevant times, defendant STOKER was the Clinical Services
17 Administrator, and was plaintiff's supervisor. Defendant STOKER was a relevant decision-
18 maker for purposes of the adverse employment actions referenced below.

19 8. This Court has jurisdiction over the subject matter of this action pursuant to 42
20 U.S.C. Section 2000e-5 and 28 U.S.C. Section 1331.

21 9. This Court has venue over this action pursuant to 42 U.S.C. Section 2000e-5 in
22 that defendant COUNTY OF MARIN employed plaintiff within the territorial boundaries of this
23 judicial district.

24 10. This Court has jurisdiction over defendant COUNTY OF MARIN in that it is a
25 government agency that, at all relevant times herein, employed plaintiff and operated under color
26 of state authority within this judicial district.

11. This Court has jurisdiction over plaintiff's California state law causes of action in that the state claims are derived from the same common nucleus of operative facts as the federal causes of action.

12. Plaintiff has exhausted all administrative remedies with the Department of Fair Employment and Housing and/or the U.S. Equal Employment Opportunity Commission. Plaintiff FINLEY filed a timely administrative charge with the EEOC and DFEH, and has filed this action within 90 days of service of the right-to-sue letters.

13. Plaintiff is informed and believe, and thereby allege that each of the defendants herein were at all times relevant hereto, the agents, representatives, servants and employees of the remaining defendants, and were acting at least in part within the course and scope of such relationship, and that the wrongful acts alleged herein were committed by such defendants, and each of them. Furthermore, plaintiff is informed and believes that defendants were, at all relevant times, one integrated enterprise and/or employer for purposes of FEHA and Title VII.

14. Plaintiff does not know the true names and capacities of defendants sued herein as DOES 1 through 50, and therefore sues these defendants by fictitious names. Plaintiff will amend his complaint to state the true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences and damages alleged herein, and that plaintiff's damages as hereinafter set forth were proximately caused by said defendants.

FACTUAL BACKGROUND

15. At all relevant times herein, plaintiff FINLEY was an African-American male employee whose skin color is black, and, as such, was a member of a protected category for purposes of FEHA and Title VII.

16. On or about August 1997, defendants hired plaintiff FINLEY as a Detention Registered Nurse ("RN") in the Health and Human Services Department. At the time that plaintiff FINLEY began his employment with Marin County, he was qualified to assume that position. During the period of time that he was employed as a Detention RN, plaintiff FINLEY performed

1 his job duties in an outstanding fashion. He was provided with consistent praise regarding his
2 skills and abilities and received regular merit increases. As a result of his superior performance, in
3 1999, plaintiff FINLEY was promoted to Supervising Detention Nurse and was provided with
4 supervisory responsibilities in connection with this new position.

5 17. In approximately 2001, a position opened up for Chief Nurse. During the period
6 of time that this position opened, plaintiff was qualified to assume the position. Plaintiff applied
7 for this position and was not selected.

8 18. In June 2006, the position of Chief Nurse re-opened, however was re-titled as
9 "Nurse Manager." During the period of time that this position opened, plaintiff was qualified to
10 assume the position. In fact, plaintiff was more qualified than any other applicant for this
11 position, and was advised by the Chief Medical Doctor of the facility that "if they don't give this
12 to you, there is a problem." Plaintiff applied for this position and was not selected. Instead,
13 defendant County of Marin selected defendant GRANT, a less-qualified Caucasian employee that
14 did not even meet the minimum qualifications.

15 19. Once defendant GRANT became plaintiff's supervisor, she targeted plaintiff's
16 employment in an attempt to create a record for disciplinary action.

17 20. In approximately July 2006, plaintiff filed an internal complaint with the County's
18 Equal Employment Opportunity/Affirmative-Action office and Human Resources alleging
19 discrimination and unequal treatment in the workplace, including the failure to promote plaintiff
20 to the Nurse Manager position. Plaintiff further advised defendants that the County of Marin has
21 a pattern and practice of discriminating against African-American employees.

22 21. Once the complaint was filed, defendants failed to take reasonable measures to
23 investigate the complaint, and further failed to take any reasonable measures to prevent the
24 discrimination from continuing.

25 22. Moreover, during this period of time and continuing up until the date that plaintiff
26 filed this legal action, defendant County of Marin has engaged and continue to engage in a pattern
27 and practice of discrimination, retaliation, and harassment against plaintiff and other similarly
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1 situated African-American employees based upon their race. The acts of discrimination,
2 retaliation, and harassment were consistent and pervasive. The discrimination and harassment
3 targeted black employees, including plaintiff's, promotional opportunities within the County with
4 the ultimate goal of preventing African-American employees from obtaining high level
5 supervisory positions, and further created a hostile work environment. The conduct included but
6 was not limited to (1) inappropriate and unwelcome racial comments, remarks, and slurs, (2)
7 harassing and retaliating behavior directed against African-Americans for making complaints of
8 unlawful discrimination in the workplace, (3) targeting plaintiff and other similarly situated
9 African-American employees with adverse employment actions based upon race, (5) treating
10 plaintiff and other African-American employees differently than similarly situated employees
11 based upon race, (6) creating a workplace that is permeated in an unwelcome and hostile work
12 environment towards African-Americans, (7) failing to promote African-American employees
13 into management level positions, and (8) enacting policies that have a disparate impact and
14 treatment towards African-American employees, including plaintiff.

15 23. Once plaintiff filed the internal complaint of discrimination, defendants retaliated
16 against plaintiff. Defendants took adverse employment actions against plaintiff as a direct result
17 of his complaints, including but not limited to transferring plaintiff, reducing his work
18 responsibilities, and creating a hostile environment.

19 24. Moreover, defendant County of Marin has a custom, policy, pattern, and practice
20 of retaliating against African-American employees that challenge defendant's employment
21 practices, and file internal complaints of discrimination or unequal treatment. Such conduct and
22 practice included but was not limited to: (1) acting with hostility towards black employees that
23 file internal complaints of discrimination; (2) not providing necessary resources to African-
24 American employees when they request assistance or investigation; (3) ignoring and isolating
25 African-American employees in the workplace that have made complaints of discrimination; (4)
26 engaging in harassing and retaliating behavior directed against plaintiff FINLEY and other
27 African-American employees for making complaints of unlawful race discrimination in the
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1 workplace, (5) targeting plaintiff FINLEY and other similarly situated African-American
2 employees with adverse employment actions based upon race and national origin, (6) retaining
3 biased workplace investigators that do not conduct fair, impartial, and objective investigations,
4 and only look out for the best interests of the employer, and (7) creating a glass ceiling for
5 African-American employees that file internal complaints of discrimination or unequal treatment
6 in the workplace. This pattern and practice has the ultimate goal of preventing minority
7 employees from obtaining high level supervisory positions, and further created a hostile work
8 environment.

9
10 **FIRST CAUSE OF ACTION**

11 (Race Harassment –All Defendants)

12 25. Plaintiff realleges and incorporates by reference Paragraphs 1 through 24 of this
13 Complaint as though fully set forth herein.

14 26. California Government Code § 12940 and Title VII of the Civil Rights Act of
15 1964, as amended, 42 U.S.C. § 2000e et seq., prohibit an employer and any person from harassing
16 any employee on the basis of race.

17 27. Defendants violated California Government Code § 12940 and Title VII of the
18 Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., with regard to plaintiff FINLEY
19 and other similarly situated employees when they engaged in a pattern and practice of harassment
20 in the workplace based upon race that was inappropriate, unwelcome, offensive, and created a
21 hostile work environment.

22 28. As a direct and proximate result of defendants' discriminatory acts, plaintiff has
23 suffered loss of employment opportunities, loss of dignity, great humiliation, and emotional
24 injuries manifesting in physical illness and emotional distress.

25 29. Defendants' actions have caused and continue to cause plaintiff substantial losses
26 in earnings, significant reputation and professional injury, loss of promotional opportunities and
27 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
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1 benefits, costs of suit, embarrassment and anguish, all to his damage in an amount according to
2 proof.

3 30. With respect to the individual defendants, the acts of these defendants as alleged
4 herein, were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and
5 intent to injure plaintiff and to cause plaintiff mental anguish, anxiety, and distress. Defendants'
6 acts were done in conscious disregard of the risk of severe emotional harm to plaintiff and with
7 the intent to injure plaintiff, constituting oppression, fraud, malice under California Civil Code
8 §3294, entitling plaintiff to punitive damages against these defendants only.

9 **SECOND CAUSE OF ACTION**

10 (Race Discrimination – Defendant County of Marin)

11 31. Plaintiff realleges and incorporates by reference Paragraphs 1 through 30 of this
12 Complaint as though fully set forth herein.

13 32. California Government Code § 12940 and Title VII of the Civil Rights Act of
14 1964, as amended, 42 U.S.C. § 2000e et seq., provide that it is an unlawful employment practice
15 for an employer to take any adverse employment action or otherwise discriminate against any
16 person on the basis of race.

17 33. Defendants violated California Government Code § 12940 and Title VII of the
18 Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. with regard to plaintiff FINLEY
19 when they wrongfully disciplined, failed to promote, discriminated, and took other adverse
20 employment actions against plaintiff FINLEY and other similarly situated black employees in the
21 terms, conditions, or privileges of employment on the basis that plaintiff and other workers were
22 African-American employees whose skin color is black.

23 34. Defendants' conduct towards plaintiff FINLEY and other similarly situated
24 employees, as alleged above, constitutes an unlawful employment practice in violation of
25 California Government Code § 12940 and Title VII of the Civil Rights Act of 1964, as amended,
26 42 U.S.C. § 2000e et seq.

1 35. As a direct and proximate result of defendants' discriminatory acts, plaintiff has
2 suffered loss of employment opportunities, loss of dignity, great humiliation, and emotional
3 injuries manifesting in physical illness and emotional distress.

4 36. Defendants' actions have caused and continue to cause plaintiff substantial losses
5 in earnings, significant reputation and professional injury, loss of promotional opportunities and
6 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
7 benefits, costs of suit, embarrassment and anguish, all to his damage in an amount according to
8 proof.

9 **THIRD CAUSE OF ACTION**

10 (Retaliation – All Defendants)

11 37. Plaintiff incorporates herein by reference all the allegations contained in
12 paragraphs 1 through 36 of this complaint as fully set forth herein.

13 38. California Government Code § 12940(h) and Title VII of the Civil Rights Act of
14 1964, as amended, 42 U.S.C. § 2000e et seq., provide that it is an unlawful employment practice
15 for an employer or any other person to retaliate against an employee for opposing an unlawful
16 employment practice, filing a complaint of discrimination or harassment, or participating in any
17 investigation or proceeding involving a claim of discriminatory treatment.

18 39. Defendants violated Government Code § 12940 and Title VII of the Civil Rights
19 Act of 1964, as amended, 42 U.S.C. § 2000e et seq., with regard to plaintiff and other similarly
20 situated employees when they retaliated against plaintiff in the terms and conditions of
21 employment, took adverse employment actions against plaintiff for reporting and lodging
22 complaints of discriminatory treatment in the workplace, participating in investigations or
23 proceedings involving claims of discrimination, and requesting that defendants take immediate
24 remedial measures and conduct fair and impartial investigations into discriminatory conduct on
25 the part of supervisors and managers.

26 40. Defendants' conduct toward plaintiff and other similarly situated African-
27 American employees as alleged above, constitutes an unlawful employment practice in violation
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1 of California Government Code § 12940 and Title VII of the Civil Rights Act of 1964, as
2 amended, 42 U.S.C. § 2000e et seq.

3 41. As a direct and proximate result of defendants' retaliatory conduct, plaintiff has
4 suffered loss of employment, indignity, great humiliation and emotional distress manifesting in
5 physical symptoms.

6 42. Defendants' actions have caused and continue to cause plaintiff substantial losses
7 in earnings, significant reputation and professional injury, loss of promotional opportunities and
8 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
9 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount
10 according to proof.

11 43. With respect to the individual defendants, the acts of these defendants as alleged
12 herein, were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and
13 intent to injure plaintiff and to cause plaintiff mental anguish, anxiety, and distress. Defendants'
14 acts were done in conscious disregard of the risk of severe emotional harm to plaintiff and with
15 the intent to injure plaintiff, constituting oppression, fraud, malice under California Civil Code
16 §3294, entitling plaintiff to punitive damages against these defendants only.

17 **FOURTH CAUSE OF ACTION**

18 (Failure to Prevent Harassment and Discrimination – Defendant County of Marin)

19 44. Plaintiff incorporates herein by reference all of the allegations contained in
20 paragraphs 1 through 43 of this complaint as fully set forth herein.

21 45. California Government Code § 12940(k) and Title VII of the Civil Rights Act of
22 1964, as amended, 42 U.S.C. § 2000e et seq., provide that it is an unlawful employment practice
23 for an employer to fail to take all reasonable steps necessary to prevent discrimination, retaliation,
24 and harassment from occurring in the workplace.

25 46. Defendants violated Government Code § 12940 and Title VII of the Civil Rights
26 Act of 1964, as amended, 42 U.S.C. § 2000e et seq., with regard to plaintiff and other similarly
27 situated female employees when defendants knowingly and recklessly created a hostile work
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1 environment for African-American employees, created a "glass ceiling" for African-American
2 employees and other minorities, engaged in a pattern and practice of discrimination against
3 African-American and minority employees, failed to conduct reasonable and impartial
4 investigations when plaintiff and other employees complained about discriminatory conduct on
5 the part of supervisors and management, and failed to take reasonable steps necessary to
6 investigate the misconduct and prevent it from occurring and continuing.

7 47. Defendants' conduct toward plaintiff and other similarly situated employees as
8 alleged above, constitutes an unlawful employment practice in violation of California
9 Government Code § 12940 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.
10 § 2000e et seq.

11 48. As a direct and proximate result of defendants' conduct, plaintiff has suffered loss
12 of employment, indignity, great humiliation and emotional distress manifesting in physical
13 symptoms.

14 49. Defendant's actions have caused and continue to cause Plaintiff substantial losses
15 in earnings, significant reputation and professional injury, loss of promotional opportunities and
16 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
17 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount
18 according to proof.

19 **FIFTH CAUSE OF ACTION**

20 (Violations of Civil Rights Laws – All Defendants)

21 50. Plaintiff incorporates herein by reference all of the allegations contained in
22 paragraphs 1 through 49 of this Complaint as fully set forth herein.

23 51. Defendants actions and failures as alleged above constitute a pattern and practice
24 of violations of the Civil Rights Laws of the United States, 42 U.S.C. §§ 1981, 1983, 1985.
25 Defendants while acting under color of state authority and law wrongfully and intentionally
26 discriminated against, retaliated against, and harassed plaintiff because of his race and because he
27 opposed practices forbidden under the anti-discrimination laws and equal protection laws of the
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1 United States. Defendants further failed to provide plaintiff with procedural and substantive due
2 process regarding adverse employment actions, failure to promote, and investigation into
3 plaintiff's internal complaints of discrimination. Defendants' conduct, as set forth above,
4 constitutes violations, under color of law, of plaintiff's rights, privileges, and immunities
5 guaranteed to them by the First Amendment of the United States Constitution rights of free
6 speech and to petition the government for redress of grievances, the equal protection clause of the
7 United States Constitution, and the due process clauses of the Fourteenth Amendment of the
8 United States Constitution.

9 52. Moreover, there existed a contract of employment between defendants and
10 plaintiff that was contained in government policies and procedures, and other agreements, and
11 defendants, acting under color of state authority and law, intentionally and willfully interfered
12 with plaintiff FINLEY's rights and benefits under that contract on the basis of race in violation of
13 42 U.S.C. § 1981.

14 53. Defendant's actions have caused and continue to cause Plaintiff substantial losses
15 in earnings, significant reputation and professional injury, loss of promotional opportunities and
16 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
17 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount
18 according to proof.

19 54. As to the individual defendants, the acts of these said defendants as alleged herein,
20 were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and intent
21 to injure plaintiff and to cause plaintiff mental anguish, anxiety, and distress. The defendants'
22 acts were done in conscious disregard of the risk of severe emotional harm to plaintiff and with
23 the intent to injure plaintiff, constituting oppression, fraud, malice under California Civil Code
24 §3294, entitling plaintiff to punitive damages against these defendants only.

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SIXTH CAUSE OF ACTION

(Violations of the California Constitution – Defendant County of Marin)

55. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 54 of this Complaint as fully set forth herein.

56. The California Constitution, Article I, Section 7, provides that a public entity may not deprive a person of a property or liberty interest without due process of law, and must provide equal protection to its employees.

57. In acting herein, defendant County of Marin violated plaintiff's due process and equal protection rights in failing to provide plaintiff with adequate procedural and substantive due process prior to engaging in adverse employment actions against plaintiff, and treating plaintiff in an unequal manner in the workplace.

58. As a result of defendant's actions, plaintiff seeks equitable and injunctive relief, including but not limited to back-pay.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against Defendants, and each of them as follows:

1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For punitive damages against the individual defendants;
3. For prejudgment interest in an amount according to proof;
4. For equitable and/or injunctive relief according to proof,
5. For reasonable attorney's fees and cost of suit therein;
6. For such other and further relief as the court may deem proper.
7. **Plaintiff hereby demands a trial by jury.**

Dated: November 21, 2007

KAHN BROWN & POORE LLP

By: 

David M. Poore
Attorneys for Plaintiff

-12-

COMPLAINT FOR DAMAGES

FINLEY V. COUNTY OF MARIN, ET. AL.

CASE No. _____